

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## An Act Concerning Certain Excavations

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 38 MRSA §480-GG** is enacted to read:

**§ 480-GG. High and moderate value inland waterfowl and wading bird habitat and excavations and quarries authorized pursuant to article 6, 7 or 8-A**

**1. Excavation authorized before June 8, 2006.** Unless a permit is required due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to obtain a permit pursuant to this article for excavation within the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

If a permit is required pursuant to this article due to the presence of a protected natural resource other than a high and moderate value inland waterfowl and wading bird habitat, an excavation or quarry that was authorized pursuant to article 6, 7 or 8-A before June 8, 2006 is not required to meet standards associated solely with the upland portion of a high and moderate value inland waterfowl and wading bird habitat.

**2. Permits not authorized.** The department may not issue a permit pursuant to this article for an excavation or quarry authorized pursuant to article 6, 7 or 8-A and located in, on or over the wetland portion of a high and moderate value inland waterfowl and wading bird habitat.

The department may not issue a permit pursuant to this article for an excavation or quarry requiring authorization pursuant to article 6, 7 or 8-A after June 8, 2006 and located in the upland portion of a high and moderate value waterfowl and wading bird habitat.

**Sec. 2. 38 MRSA §488, sub-§24** is enacted to read:

**24. Nonmetallic mining accessory uses and facilities.** Accessory uses and facilities within an excavation or quarry operating under the performance standards in article 7 or 8-A are exempt from this article if the performance standards in article 7 or 8-A or the rules implementing those articles are at a minimum as restrictive as the standards imposed under this article. For the purposes of this subsection, "accessory uses and facilities" means uses and facilities associated with the processing of material pursuant to article 7 or 8-A such as screening and the crushing, loading and manufacture of ready-mix concrete and bituminous concrete and associated products and weight scales, scale shacks and maintenance garages. This subsection does not apply to a development constructed during or after reclamation.

**Sec. 3. 38 MRSA §490-D, sub-§1**, as amended by PL 2007, c. 290, §11, is further amended to read:

**1. Significant wildlife habitat and other protected areas.** Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur in, on or over a significant wildlife habitat or other type of protected natural resource provided a permit is obtained pursuant to article 5-A. Permit requirements for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

**Sec. 4. 38 MRSA §490-D, sub-§5-A**, as amended by PL 2007, c. 364, §2, is further amended to read:

**5-A. Protected natural resource buffers.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and having the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirement under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal ~~high-water~~high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and any other water body, river, stream, brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland or a freshwater wetland consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of floodplain wetlands; if no floodplain wetlands are present, the width of the natural buffer strip is measured from the normal ~~high-water~~high-water mark of a great pond, river, stream or brook or the upland edge of a freshwater or coastal wetland. The department may ~~not grant a variance from~~ allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. An excavation is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

**Sec. 5. 38 MRSA §490-D, sub-§17** is enacted to read:

**17. Lighting.** Lighting must be shielded from adjacent highways and residential areas.

**Sec. 6. 38 MRSA §490-Z, sub-§1**, as amended by PL 2007, c. 290, §12, is further amended to read:

**1. Significant wildlife habitat and other protected areas.** Affected land may not be located in, on or over a significant wildlife habitat or other type of protected natural resource, as defined in section 480-B, or in an area listed pursuant to the Natural Areas Program, Title 12, section 544. The department may allow excavation to occur in, on or over a significant wildlife habitat or other type of protected natural resource provided a permit is obtained pursuant to article 5-A. Permit requirement for certain excavations in, on or over high and moderate value inland waterfowl and wading bird habitat are also governed by section 480-GG.

**Sec. 7. 38 MRSA §490-Z, sub-§5**, as amended by PL 2007, c. 364, §3, is further amended to read:

**5. Protected natural resource buffers.** A natural buffer strip must be maintained between the working edge of an excavation and a river, stream, brook, great pond or coastal wetland as defined in section 480-B. A natural buffer strip must also be maintained between the working edge of an excavation and certain freshwater wetlands as defined in section 480-B and have the characteristics listed in paragraph B. Excavation activities conducted within 100 feet of a protected natural resource must comply with the applicable permit requirements under article 5-A. The width requirements for natural buffer strips are as follows.

A. A natural buffer strip at least 100 feet wide must be maintained between the working edge of the excavation and the normal ~~high water~~high-water line of a great pond classified as GPA, a river flowing to a great pond classified as GPA or a segment of the Kennebec River identified in Title 12, section 403, subsection 7.

B. A natural buffer strip at least 75 feet wide must be maintained between the working edge of the excavation and a body of water other than as described in paragraph A, a river, stream or brook, coastal wetland or significant wildlife habitat contained within a freshwater wetland consisting of or containing:

- (1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or
- (2) Peat lands dominated by shrubs, sedges and sphagnum moss.

For purposes of this subsection, the width of a natural buffer strip is measured from the upland edge of a floodplain wetland. If no floodplain wetlands are present, the width is measured from the normal ~~high water~~high-water mark of the river, stream or brook. The width is measured from the normal ~~high water~~high-water mark of a great pond and upland edge of a freshwater or coastal wetland.

The department may ~~not grant a variance from~~ allow excavation to occur under this subsection as long as a permit is obtained pursuant to article 5-A. A quarry is not eligible for a permit by rule under department rules regarding activities adjacent to a protected natural resource.

**Sec. 8. 38 MRSA §490-Z, sub-§15** is enacted to read:

**15. Lighting.** Lighting must be shielded from adjacent highways and residential areas.

**Sec. 9. Inland waterfowl and wading bird habitat.** The Department of Environmental Protection, referred to in this section as "the department," shall compile all current and accurate information on the designation of high and moderate value inland waterfowl and wading bird habitat on all licensed or approved excavations and quarries in existence prior to June 8, 2006. The department shall convey to all affected operations the compiled information with an explanation of the resource values of the inland waterfowl and wading bird habitat designated on the property of the affected operation. The department shall strongly encourage property owners with licensed or approved, but unexcavated, areas within the inland waterfowl and wading bird habitat to consult with the Department of Inland Fisheries and Wildlife and the department on:

1. Management practices that avoid impacts on wading birds and waterfowl during nesting season and that maintain or enhance the inland waterfowl and wading bird habitat; and
2. Reclamation strategies for each excavated portion of the inland waterfowl and wading bird habitat.

These practices and strategies must be compatible with excavation and quarry operations.

Effective July 18, 2008